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January 26, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 22, 2005

Case Number: TSO-0332

This Decision concerns the eligibility of xxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." 1/ A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with the DOE, DOE contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

The individual has been employed by a DOE contractor in a position that requires her to maintain an access authorization. In 2004, the DOE received derogatory information about the individual that created a substantial doubt regarding her eligibility. Based on this derogatory information, the DOE conducted a Personnel Security Interview (PSI) with the individual on September 9, 2004. In that

1/ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

PSI, the individual indicated that she suffers from "severe mood swings characterized by uncontrollable crying and was diagnosed by her family doctor as suffering from depression." DOE Exh. 9. During this interview, the individual also admitted to having suicidal tendencies and a past history of using illegal drugs (resolved in a 10/11/96 PSI) and prescription drugs to cope with her mental and emotional problems. *Id.* As a result of that interview, DOE referred the individual to a psychiatrist (DOE consultant-psychiatrist) for a psychiatric evaluation. The DOE consultant-psychiatrist examined the individual, and memorialized his findings in a report dated September 8, 2005 (Psych. Report or DOE Exhibit 4). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual has a mental condition which causes or may cause a significant defect in her judgment or reliability. Since information creating doubt as to the individual's eligibility for a security clearance remained unresolved after the psychiatric evaluation, the DOE suspended the individual's security clearance and the local DOE security office (DOE Security) initiated formal administrative review proceedings.

The DOE then issued a Notification Letter to the individual which identified the derogatory information that cast doubt on her continued eligibility for access authorization. The Notification Letter alleges that the individual has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability of the individual. 10 C.F.R. § 710.8(h) (Criterion H). In a letter received by the DOE Office of Hearings and Appeals (OHA) on November 30, 2005, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, I established a hearing date. 10 C.F.R. § 710.24.

At the hearing, the DOE Counsel called the DOE consultant-psychiatrist as a witness. Apart from testifying on her own behalf, the individual called five witnesses: her primary care provider, a former supervisor, a co-worker, a long-time friend who is also her Narcotics Anonymous sponsor, and her husband. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by the individual as "Ind. Exh."

II. Summary of Findings

The following facts are essentially uncontroverted. The individual has been working for a DOE contractor since 1996 and has held an access authorization since then. A reinvestigation of the individual received on January 16, 2004 contained information that the individual was diagnosed by a mental health professional as suffering from depression. Derogatory information presented during this background investigation resulted in a determination by DOE Security to conduct a PSI with the individual. Below is a summary of the derogatory information revealed by the individual's background investigation and PSI as well as history obtained through the DOE consultant-psychiatrist's interview of the individual.

The individual stated that as a child she "had very low self-esteem" which she blames on poor child-rearing. PSI at 21. She explained that her parents used frequent corporal punishment and that she

felt abused. Psych. Report at 2. The individual characterized herself as the "black sheep" of her family. PSI at 21. She recalled that she attempted suicidal overdose and self-harm numerous times as a teenager. Psych. Report at 2. The individual specifically admits that she attempted suicide on three occasions as a teenager and has had many depressive episodes, including suicidal feelings, as an adult. PSI at 14-15; Psych. Report at 2-3. After her first suicide attempt, the individual was referred to a psychiatrist for outpatient counseling.

The individual stated that she has been involved in three long-term abusive relationships. The first one occurred in the early 1970s with a boyfriend with whom she cohabited (but later broke up with because she believed he was engaging in illegal activity). The second abusive relationship occurred at the age of 19 with her first husband. She attempted suicide in 1975 and divorced the first husband in 1976. The third relationship was with her second husband whom she married in 1984 and divorced in 1988 because he was abusive.

The individual acknowledged that she used speed (amphetamines) about 12 times from the late 1970s until the early 1980s. She also acknowledged using "downers" (barbiturates) for about a month in 1981. In addition, the individual acknowledged the use of cocaine on about six occasions from about 1980 through 1982 and recalled the use of heroin once in 1971 when it was placed in a marijuana joint without her knowledge.

In 1990, the individual told her gynecologist about her suicidal feelings. The gynecologist prescribed Xanax to deal with these feelings. However, the individual stated that the Xanax made her feel even more suicidal. She stated that the gynecologist recommended a psychiatrist but she refused because she could not afford it. The individual further recalled that she used marijuana to deal with her depression and mood swings. From 1980 through 1988, the individual stated that she used marijuana on a daily basis, smoking up to two or three joints a day. In May 1992, the individual tested positive for marijuana in a drug test at a former employer. She subsequently entered a six-week drug rehabilitation program, where she was diagnosed with Substance Abuse. The individual stated that she discontinued use of marijuana and all illegal drugs after her completion of the drug rehabilitation program.

In May 1992, the individual began her participation in Narcotics Anonymous (NA). She stated that she attended the NA on a couple of occasions but did not like the groups and stopped attending meetings. She stated that she has continued her telephone conversations with her sponsor at least once a month. The individual further stated that she later sought healing and treatment in Native American sweat lodges in 1995, but in 1996 a sexual incident occurred between her and a married member and she was asked to leave the group.

The individual's most recent depressive episode occurred in September 1999, after the death of her mother. Her primary care provider, a certified nurse practitioner, diagnosed her with Depression and prescribed her an antidepressant, Zoloft. The individual stated that "the Zoloft controlled her depressive symptoms and helped her to keep on an even keel emotionally." Psych. Report at 9. She took Zoloft at a dosage of 150 mg per day. *Id.* at 5.

The individual stated that she currently takes two narcotic pain medications prescribed for control of chronic neck and low back pain and a benzodiazepine medication. According to the individual, she underwent surgery for a herniated disk in 2000. She also suffers from lower back pain from a scoliosis condition that causes muscle spasms. However, the individual strongly denies any misuse of these prescription medications.

On September 9, 2004, DOE conducted a PSI with the individual to resolve these security concerns and other issues pertaining to the individual. Due to unresolved security concerns relating to the individual's mental status, DOE Security referred the individual to a DOE consultant-psychiatrist who reviewed the individual's personnel file and performed a psychiatric interview and evaluation of the individual. His evaluation included psychological testing. In his report issued on September 8, 2005, the DOE consultant-psychiatrist opined that the individual met the criteria for Borderline Personality Disorder as set forth in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, TR (DSM-IV TR)*. Psych. Report at 7. While the individual's primary diagnosis is Borderline Personality Disorder, the DOE consultant-psychiatrist also found that the individual met the criteria for a diagnosis of Recurrent Major Depression (in remission), and Cannabis Abuse (in full remission since 1992). The DOE consultant-psychiatrist opined that the Borderline Personality Disorder has affected the individual's "judgment or reliability in the past, and she has a history of numerous suicide attempts, illegal drug use and abusive marriages or long-term relationships." He further stated that the individual has shown questionable judgment in breaking off treatment on a couple of occasions. He stated that while the individual appropriately sought medication treatment in 1999 and remains on an antidepressant, "her use of two narcotic pain medications and a benzodiazepine are of concern in a person with a history of substance abuse and a worsening of suicidality when placed on a benzodiazepine." The DOE consultant-psychiatrist concluded that the individual has an illness or mental condition that causes, or may cause, a significant defect in judgment or reliability.

III. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of whether the individual's access authorization should be restored, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my determination that the individual's access authorization should be restored and that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d).

A. Hearing Testimony

1. Primary Care Provider

The individual's Primary Care Provider is a certified nurse practitioner. She testified that she has been treating the individual for about eight years. Tr. at 49. The Primary Care Provider testified that she prescribed Zoloft to the individual for depression shortly after the death of the individual's mother. *Id.* at 50. However, she encouraged the individual to continue taking Zoloft to deal with her chronic pain. According to the Primary Care Provider, "the trend now is treat with Zoloft for chronic pain syndrome, fibromyalgia, migraines . . ." *Id.* However she testified that the individual is no longer taking Zoloft. The Primary Care Provider further testified that she referred the individual to a neurosurgeon who performed surgery on the individual's neck. The Primary Care Provider explained that the individual was pain-free for about a year, but suddenly started having pain again and severe headaches. *Id.* at 51. At this point the Primary Care Provider testified that she started to prescribe narcotics to the individual to help her deal with her chronic pain. She added that at no point did she ever see the individual abuse the prescribed medication. *Id.* When asked whether the individual came to her on a routine basis to get the narcotics prescriptions refilled, the Primary Care Provider responded that "[the individual] came to me at good times. I've had other patients who were drug seekers, and if I give them a certain number of medication tablets to take for the month, they have excuses about they lost the prescription, someone stole their medications, they were flushed down the toilet by accident, but [the individual] never had any excuses. [The individual] came in a timely manner, in fact, beyond the times I prescribed medicine for the month." *Id.*

The Primary Care Provider testified that the individual constantly sought other alternatives to resolve her pain besides the use of narcotics. In fact, she referred the individual to several doctors to help her resolve the pain. The Primary Care Provider stated that she tried to get the individual treated by a special neurosurgeon in a different state who deals with neck problems, but that surgeon refused to see the individual because she had prior surgery. *Id.* at 52. Finally, the Primary Care Provider referred the individual to a doctor who performed a procedure that deadened the nerves in the individual's neck. After this procedure, the Primary Care Provider testified that she saw a significant change in the individual's mobility and appearance. *Id.* at 54-55. Since this procedure, the Primary Care Provider testified that the individual has been taken off of all medications

(including Zoloft) except for Zocor for cholesterol, Singulair for asthma, and occasional use of Valium for muscle spasms caused by restless leg syndrome. *Id.* at 55-56. She explained that she prescribed a low dose of Valium (diazepam) which is commonly used by orthopedic surgeons for muscle spasms. The Primary Care Provider stated that the individual's muscle spasms could possibly be related to the cause of the individual's chronic neck pain and that muscle spasms could be resolved when the neck pain is resolved. She reiterated that she felt comfortable prescribing these medications to the individual despite her background with narcotics.

During the hearing, the Primary Care Provider testified that she disagreed with the DOE consultant-psychiatrist's diagnosis of the individual. Admitting that she is not a psychiatrist, the Primary Care Provider who has known the individual for seven years, testified that the individual seems to be a stable person. She also described the individual as a very truthful person, adding that "there are a lot of people that would not have given all the information [about the individual's background] that she did to the psychiatrist. She could have withheld a lot of information that she gave him, but she's very truthful . . I think she's stable. She loves her job. She has a good relationship with her husband." Tr. at 60-61. She further added that the individual was a teenager when many of these negative issues occurred in her past, stating that "people grow when they change." *Id.* at 72. When asked whether she had a concern about prescribing a narcotic-based drug, Valium, to someone who has had a history of narcotics abuse, she testified that she was not concerned because the individual was in so much pain, "I convinced her that she needed to take the medication. Because it was painful for her to even get dressed in the morning." *Id.* at 63. The Primary Care Provider testified that she tried nonsteriodal drugs with the individual but that they were not strong enough to address her pain. She testified that the individual has handled the narcotics medication responsibly. In addition, when questioned about whether she was aware of the individual's previous suicide attempts, the Primary Care Provider stated that the topic was never discussed, but testified that had the individual told her of the suicide attempts in the past, she would have prescribed the Valium in the same manner, adding that she "felt comfortable prescribing medication for her." *Id.* at 64.

The Primary Care Provider stated that she would not describe the individual as a drug addict but would rather characterize her as "a person who had a past history of drugs," reiterating that the individual has been proactive in trying to get off narcotic medications. *Id.* She further testified that the individual has spoken to her about Narcotics Anonymous and is aware that she is still following the program for "moral, mental support." *Id.* at 65. Finally, when asked about the individual's present medical condition, the Primary Care Provider testified that the individual "has the neck pain, which is now resolving with treatment. She has a problem with asthma, which is now controlled with the medication. And she has a problem with hyperlipids (cholesterol). . . . She went through a situational depression when she lost her mom, and some anxiety when she went through the situation with [her supervisor]." In her opinion, the individual has "acted appropriately in stressful situations." *Id.* at 65-66.

2. The Individual

The individual testified that she was surprised when she learned of the DOE consultant-psychiatrist's diagnosis and of the suspension of her access authorization. She testified that shortly after her access

authorization was suspended, she asked another psychiatrist to conduct a psychological evaluation of her. Tr. at 79; Ind. Ex. C. However, she testified that this psychiatrist refused to conduct another psychological evaluation of her because he felt that it was not necessary. He opined that the individual did not have a mental disorder. *Id.*

When questioned about how she disagrees with the DOE consultant-psychiatrist's Report, the individual testified that she is troubled that the DOE consultant-psychiatrist focused so much of his Report on issues that occurred in her past "over thirty years ago and basing his opinion on what I did as a teenager, a young adult and using it against me." *Id.* at 81. The individual admitted that she has had a lot of issues in her past, but argued that the DOE consultant-psychiatrist diagnosed her after spending only a short period of time with her and not speaking to others about her. *Id.*

The individual testified that she no longer has mood swings, one of the bases for the DOE consultant-psychiatrist's diagnosis, since she has been on a hormonal treatment. She attempted to give insight into her past. The individual stated that her suicide attempts occurred thirty years ago when she was in a different mental state, largely shaped by the relationships she was in at the time. *Id.* at 84. She explained that she was never a victim of physical abuse, but rather emotional and mental abuse. The individual further explained that her insecurity at the time made her believe that "the world would be a better place without her." *Id.* She testified that she began to feel better about herself when she started attending NA as a result of a failed drug test at a previous employer. *Id.* at 85. The individual stated that she began working through her "co-dependency" issues, "by working through the steps [of NA] and realizing that I can be happy all by myself and without any external influences, whether it be the drugs or people, that I am who I am, and I can be okay all by myself. I don't have to have somebody in my life." *Id.* at 87. As a result of NA, the individual testified that she changed her outlook on life and her thinking process as well as the people with whom she socialized. *Id.* at 88. She described her current marriage as good and stable, adding that she felt good about herself before she met her present husband. She explained that "I decided at some point that I was going to learn from my past mistakes, so I decided that I was going to be totally up-front with this man about who I am and what I am and what I expected." *Id.* at 93.

In all, the individual described herself as a very different person now. She testified that she now has a relationship with God, she feels much more secure about herself and believes she is a stable person. *Id.* She now knows how to deal with stressful situations by talking to family and friends, including her NA sponsor. *Id.* at 97. The individual testified at great length about a very stressful incident that occurred at work with her former supervisor at the time. According to the individual, in about 2001 she was sent home from work because her supervisor felt that her stretch Capri pants were too tight and in violation of office dress code. Two weeks later, the individual wore shorts to work. Her supervisor again felt that her clothing was not appropriate work attire and sent her to Human Resources. *Id.* at 102-106. Although these work incidents caused her a great deal of stress, the individual testified, and friends and a co-worker corroborated, that she handled them in an appropriate and professional manner.

3. Additional Lay Witnesses

The individual presented the testimony of four character witnesses, including her long-time friend and NA sponsor, her former supervisor, a co-worker and her husband. The individual's NA sponsor testified that she has known the individual since 1992 through NA. According to the NA sponsor, she speaks to the individual once or twice a month. She testified that the individual is currently working the NA program and that she has noticed a change in the individual's mental state over the time period that they have known each other. Tr. at 30. She testified that "we find that in this program with our steps, we get rid of some of our shame and guilt of our past, how we lived. We try to do a better way of life. We try to get aware of how we're treating others and ourselves and life." *Id.* The NA sponsor stated that she was aware that the individual took a prescribed narcotic medication. She testified that the individual handled herself well and believes she has not taken advantage of the narcotic aspect of the medication but rather the pain-relief aspect as prescribed.

The individual's former supervisor testified that the individual worked for him for approximately three and a half years. He considered the individual to be mentally stable. He testified that he had no reason to believe that the individual was involved with drugs, suffered from depression or had suicidal tendencies. Tr. at 11. The former supervisor further testified that the individual performed reliably under pressure situations. *Id.* at 13. Likewise, the individual's co-worker, who has known the individual for approximately ten years and sees the individual on a weekly basis, testified that he has never seen the individual having any problems with drugs or depression. According to her co-worker, who is a member of senior staff, the individual has handled herself very well under stress, adding that he had first-hand knowledge of the stressful workplace incidents mentioned earlier in this decision. Finally, the individual's husband testified that he and the individual have a strong, stable marriage. He also stated that the individual has handled stressful situations in an appropriate and normal manner, citing the unexpected death of her mother as an example. *Id.* at 24.

4. The DOE Consultant-Psychiatrist

The DOE consultant-psychiatrist reviewed the individual's file, conducted a mental examination interview of the individual and administered the individual the Minnesota Multiphasic Personality 2 (MMPI-2). As a result of his findings, the DOE consultant-psychiatrist diagnosed the individual with Borderline Personality Disorder. During the hearing, the DOE consultant-psychiatrist explained that Borderline Personality Disorder fits on the second axis of the diagnostic structure under DSM-IV. He testified that "Axis II are diagnoses that are called personality disorders, and they're often more at the psychological end of the spectrum. They are disorders that . . . almost have to have symptoms present from early adulthood onward, and there are psychological conditions typically resulting from difficulties that occur while the personality is being formed. . . . from childhood or early adulthood on. They're typically treated with psychological treatments, psychotherapy, counseling." Tr. at 113. 2/ In his Report, the DOE consultant-psychiatrist

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2/ The DSM-IV TR definition and criteria for Borderline Personality Disorder are the following: A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning in early adulthood and present in a variety of contexts, as indicated by 5(or more) criteria.

(continued...)

concluded that the individual's Borderline Personality Disorder has affected her judgment or reliability in the past, "and she has a history of numerous suicide attempts, illegal drug use, and abusive marriages or long-term relationships." DOE Exh. 4 at 9. He further concluded that while the individual sought medication treatment in 1999 and remains on an antidepressant, "her use of two narcotic pain medications and a benzodiazepine are of concern in a person with a history of substance and a worsening of suicidality when placed on benzodiazepine." *Id.*

The DOE consultant-psychiatrist listened to the testimony of the other witnesses before testifying himself. During the hearing, the DOE consultant-psychiatrist testified that the individual's previous suicide attempts made up a significant part of his diagnoses. *Id.* at 116. When questioned about whether the individual can "overcome" Borderline Personality Disorder in light of the fact that her suicide attempts occurred when she was much younger and the fact she appears stable now, the DOE consultant-psychiatrist stated the following: "it [the disorder] doesn't completely disappear like some of the [other] diagnoses. But on the other hand, it doesn't mean that you're never going to get over the personality disorder symptoms that were maybe severe at one point. In a sense, you can outgrow it, and often people do with age and treatment." *Id.* at 119. The DOE consultant-psychiatrist further testified that at the time of his evaluation of the individual, he was asked to predict the future and at the time he believed the individual had an illness that might likely cause a defect in judgment or reliability. He explained the following:

> The best guide, first of all, for the future, is the past. Also if you have a knowledge of the diagnosis, you can get some kind of idea of what the future might look like for that diagnosis. At the time I saw her [the individual] . . . I thought her condition was improving. It sounded like any real bad symptoms were 20 years old. The bad ones meaning, I'm talking about her suicide attempts. That's [sic] the ones that are of the most concern to her safety and instability of things that might come up. The nature of borderline personality disorder too is that when the person is not under stress they

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2/(...continued)

1. Frantic efforts to avoid real or imagined abandonment.
2 A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.
3. Identity disturbance: markedly and persistently unstable self-image or sense of self.
4. Impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating).
5. Recurrent suicidal behavior, gestures, or threats, or self mutilated behavior.
6. Affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).
7. Chronic feeling of emptiness
8. Inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights).
9. Transient, stress-related paranoid ideation or severe dissociative symptoms.

> may be symptom free. They may look like they run the place. And when stress happens they deteriorate abnormally far, is one hallmark of the diagnosis. There is instability that is present. So just because the person looks good when you're seeing them isn't as reassuring as it appears, because what you have to look at is, well what might happen if a severe stress hit them? With this disorder, if they get hit with a severe stress they can kill themselves, for instance, or have very significant symptoms. In making my impression that it might cause a significant defect in her judgment and reliability . . . there is the presence of a number of problems, any one of which might cloud the future, but when you have all of them together it clouds the future prognosis more.

Id. at 122-123.

When asked whether the individual's problems have been resolved and whether the prognosis would change, the DOE consultant-psychiatrist testified that it is a good indicator that the individual now has support systems in place such as a good marriage and friends she can call for help. *Id.* at 123. He further testified that there are a number of risk factors that now appear to be mitigated, such as the suicide attempts and the individual's history of drug abuse and overdoses. *Id.* at 125. Although he remained concerned about the individual's use of Valium for restless leg syndrome, the DOE consultant-psychiatrist believed the individual's Primary Care Provider "gave a good clinical explanation of why she took the initiative to employ these narcotic pain recommendations . . ." *Id.* at 126. The DOE consultant-psychiatrist testified that when he initially evaluated the individual, she was in a "gray area." *Id.* at 126. He stated that "the past problems were severe, but they were so long ago that she was kind of coming out of the woods. The things that have happened over the past six months, have, in general, been positive for her . . . The nerve blocks have treated her pain. She's doing okay off of an antidepressant. . . ." *Id.* But the negative side of the gray area . . . her factors that she presented today that are new to me . . . so I would lean on the positive side of the gray area." *Id.* at 130.

The DOE consultant-psychiatrist further testified that although he believes the individual's diagnosis is a chronic one, "I would say that it is to the point now that it is not causing clinically significant impairment." *Id.* at 136. When questioned further, he stated that he believes that the individual's prognosis is good now and would now be considered an acceptable risk of relapse. The DOE consultant-psychiatrist further stated the following:

> I guess I'm saying I would change [my previous conclusion] now in that . . . given the input that I got today, I would say it's [the individual's condition] is not likely to cause a defect in her judgment and reliability in the future. . . . And that's part of the reason, I think I've, in a sense, flipped is, before, she was just barely on one side of the summit, and she's gone just a little bit to get over on the other side of the summit of risk assessment. She had those problems that I noted, but they were so far long ago that many clinicians would have argued, I bet, that she didn't meet criteria for borderline personality disorder anymore, and I shouldn't even list it. I did because

> I thought there was all those negative factors that I mentioned. But I think those have been mitigated by the things I've heard today.

Id. at 140-141.

B. Analysis of Hearing Testimony and Other Evidence in the Record

On the basis of the report of the DOE consultant-psychiatrist, I find that DOE Security properly invoked Criterion H in suspending the individual's access authorization. It was reasonable for the DOE to conclude that a diagnosis of Borderline Personality Disorder by a trained professional meant that the individual's judgment and reliability could be impaired, which would hinder the individual in safeguarding classified matter or special nuclear material. A finding of derogatory information does not, however, end the evaluation of the evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing*, Case No. VSO-0154, 26 DOE ¶ 82,794 (1997), *aff'd, Personnel Security Review*, Case No. VSA-0154, 27 DOE ¶ 83,008 (1998) (*affirmed* by OSA, 1998). As stated earlier, the regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710(a).

I have carefully considered the above-mentioned testimony in the record. Based upon the weight of the evidence and testimony presented in this case, I have concluded that the individual has adequately mitigated the concerns of DOE Security under Criterion H. First, I found the testimony regarding the individual's present medical condition to be persuasive. The individual has discontinued all medications except for the diazepam (Valium) she takes for her restless leg syndrome and her cholesterol and asthma medications. The individual's Primary Care Provider provided a solid and reasonable explanation for prescribing the Valium for the individual. The record and the testimony strongly supports the fact that the individual has not misused her prescribed narcotic based medication. In addition, the individual appears to be very stable. She has strong support mechanisms in place including her husband, friends and NA sponsor, and has not suffered any severe symptoms for over twenty years. The testimony in the record clearly confirms that the individual has made a positive change in her life over the last couple of decades. Secondly, I found the testimony of the individual's Primary Care Provider to be very persuasive. Although she is not a psychiatrist and thus could not offer an expert opinion on the individual's mental condition, she provided credible testimony on the individual's current physical and mental status based on her frequent meetings with her. Lastly and most significantly, I am persuaded by the DOE consultant-psychiatrist's testimony that the individual's prognosis is good. He conceded that the individual's most severe symptoms occurred over 20 years ago and that she has not had any serious issues since then. After listening to the testimony during the hearing, the DOE consultant-psychiatrist concluded that the individual's condition is not likely to cause a significant defect in her judgement and reliability. After weighing all of the evidence and the favorable testimony in this case, I am convinced that the individual has adequately mitigated the security concerns. Moreover, I believe

that the individual is a stable person who can be trusted to act in a manner consistent with the best interests of national security.

IV. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8(h) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has adequately mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The Manager of the DOE Operation Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: January 26, 2007